

REMARKS/ARGUMENTS

Claims 1, 2, 4 and 6 are currently pending in this application, as amended.

Removal of Finality of May 28, 2009 Action

Pursuant to M.P.E.P. §706.07(a) it is proper to make a second or subsequent Action on the merits final "except where the Examiner introduces a new ground of rejection that is neither necessitated by Applicants' amendment of the claims nor based on information submitted in an Information Disclosure Statement filed by the period set forth in 37 C.F.R. §1.97(c)..." In the present case, the prior response merely incorporated the subject matter of claim 3 submitted during the original filing of the application into independent claim 1. In view of this, Applicants' prior amendment did not necessitate any new grounds of rejection and the current rejection of claim 1 could have been made in connection with claim 3, which was in fact rejected on different grounds which were overcome with the reply filed on December 15, 2008. As Applicants' amendment did not necessitate any new grounds for the rejection as it merely incorporated the subject matter of claim 3 into claim 1, making this second Action final is improper pursuant to M.P.E.P. §706.07(a). Accordingly, the finality of the May 28, 2009 Action should be withdrawn and this response should be considered on the merits.

Claim Rejections - 35 USC § 103

In the action, claims 1-2 and 4-6 were rejected under 35 USC § 103(a) as unpatentable over combination of DE 102 53 495, U.S. Patent No. 2,392,573 to Brock et al. and US2004/0227400 to Kraus et al. Applicants respectfully traverse this rejection.

Claim 1 is directed to a traction mechanism drive comprising an integrated generator with the traction mechanism roller arranged on a generator shaft over which a traction mechanism is guided. The generator is mounted in a displaceable manner in order to set traction mechanism in tension counter to a restoring force. The traction mechanism roller is de-couplable from the generator shaft of the generator via a freewheel for damping peak loads occurring on a drive side, and the generator is set in tension in a displaceable manner by a hydraulic element.

The Action uses hindsight reconstruction based on Applicants' disclosure in order to make the present rejection. The Action admits that DE '495 fails to disclose a generator mounted in a displaceable manner in order to set the traction mechanism in tension counter to a restoring force. Brock et al. is cited as teaching a tractor generator with a spring mounting in order to increase belt tension. The Action then cites Kraus et al. as disclosing a tensioner that includes a hydraulically controlled actuator (25) used to pivot a tension roller (10) into contact with a belt in an adjustable manner.

However, it is clear from Kraus et al. that this tension roller (10) is separate and apart from a fixed generator pulley (30) and, according to the disclosure at paragraphs [0010] and [0011], is used to change the tension on the traction element in dependence on a rotation speed of the traction member and/or an operating phase of the internal combustion engine. Kraus et al. is consistent with DE '495 in not providing a generator that is separately tensioned. Further, Kraus et al. teaches against combining such a hydraulically actuated tension roller with a generator since the effective length of the actuator is changed in dependence on the rotation speed or other operating phases of the internal combustion engine, rather than being used to specifically protect and/or enhance the function of the generator on an internal combustion engine. The actuator arrangement of Kraus et al. is therefore not properly combinable with a spring-tensioned generator arrangement as this would change the principle of operation of Kraus et al. from controlling the tension on the traction member using a separate tension roller in accordance with the operating state or speed of the internal combustion engine to now controlling the tension dependent on the generator function. In view of these differences, withdrawal of the Section 103 rejection of claim 1 is respectfully requested.

Claims 2, 4 and 6 depend directly or indirectly from claim 1 and should be similarly patentable for the reasons noted above in connection with claim 1.

Conclusion

If the Examiner believes that any additional minor formal matters need to be addressed in order to place the present application in condition for allowance, the Examiner is invited to contact the undersigned by telephone by telephone at the Examiner's convenience.

In view of the foregoing amendment and remarks, Applicants respectfully submit that the present application, including claims 1, 2, 4 and 6, is in condition for allowance and a notice to that effect is respectfully requested.

Respectfully submitted,

Painta et al.

By____/Randolph J. Huis/____
Randolph J. Huis
Registration No. 34,626
(215) 563-6400

Volpe and Koenig, P.C.
United Plaza, Suite 1600
30 South 17th Street
Philadelphia, PA 19103
RJH/dmm